

BEFORE  
THE FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D. C. 20554

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Federal Communications Commission  
Office of the Secretary

Docket No.

WC-03-112

In the Matter of

ClickQuick II, LLC,  
San Marino at Laguna Lakes, L.L.C.  
a/k/a Bear Lakes Associates, Ltd., and  
Villa Del Sol, L.L.C. a/k/a VDS Associates, Ltd.

Petitioners

-against-

BellSouth Telecommunications, Inc.

Respondent

**FIRST AMENDED PETITION  
FOR DECLARATORY RULING THAT  
THE LOCATION OF THE DEMARCATION POINT  
PURSUANT TO 47 C.F.R. §68.105(d)(2) PREEMPTS  
THE LOCATION OF THE DEMARCATION POINT  
PURSUANT TO §25-4.0345(1)(B)(2)  
OF THE FLORIDA ADMINISTRATIVE CODE**

**To the Commission:**

Petitioners ClickQuick II, LLC, San Marino at Laguna Lakes, L.L.C. a/k/a Bear Lakes Associates, Ltd., and Villa Del Sol, L.L.C. a/k/a VDS Associates, Ltd., whose address is c/o ClickQuick II, LLC, 1307 Boston Township Line Road, Richmond, IN 47375, by their attorney, W. James Mac Naughton state as follows:

1. Petitioner ClickQuick II, LLC ("ClickQuick II") is a Florida limited liability company. ClickQuick II is engaged in the business of providing high speed internet access service to the residents of large multifamily residential properties in Florida.

2. Petitioner San Marino at Laguna Lakes, L.L.C. a/k/a Bear Lakes Associates, Ltd., owns and maintains a large multifamily residential complex located at 4200 N. Military Trail, West Palm Beach, Florida, a residential property commonly known as San Marino at Laguna Lakes ("San Marino"). ClickQuick II provides high speed internet access service to the residents of San Marino.

3. Respondent BellSouth Communications, Inc. ("BellSouth") claims that it installed all of the equipment used at San Marino to provide telephone service. That equipment includes devices commonly known as "66 blocks" located in the utility room of each building. There are four (4) pairs of twisted pair wiring that run from each "66 block" into each dwelling unit. The shortest run is approximately fifteen (15) feet and the longest run is approximately one hundred (100) feet. The four (4) pairs of twisted pair are colored blue, green, orange and brown.

4. ClickQuick II provides its service at San Marino by attaching its facilities to the 66 block and using two (2) pair out of the four (4) pair of the twisted pair wiring to deliver its service into the unit. At eleven (11) buildings in San Marino, ClickQuick II uses the green and brown colored twisted pair wires. At six (6) buildings in San Marino, ClickQuick II uses the green and orange colored twisted pair wires. There is no economical way for ClickQuick II to provide its service at San Marino without using the two (2) pair of twisted pair wiring in this manner. None of the wiring used by ClickQuick II is used by BellSouth to provide its services into the unit.

5. BellSouth provides its service at San Marino using the twisted pair wiring not used by ClickQuick II. Thus at eleven (11) buildings in San Marino, BellSouth uses the blue and orange colored twisted pair wiring. At six (6) buildings at San Marino, BellSouth uses the blue and brown colored twisted pair wiring. BellSouth technicians have complained to ClickQuick II technicians about having to use the brown colored twisted pair wiring at six (6) buildings because BellSouth technical standards call for the use of the orange colored twisted pair wiring.

6. Petitioner Villa Del Sol, L.L.C. a/k/a VDS Associates, Ltd., owns and maintains a large multifamily residential complex located at 2925 S. Federal Highway, Boynton Beach, Florida, residential property commonly known as Villa Del Sol ("Villa Del Sol").

7. BellSouth claims that it installed all of the equipment used at Villa Del Sol to provide telephone service. That equipment includes devices commonly known as "66 blocks" located in the utility room of each building. There are four (4) pairs of twisted pair wiring that run from the "66 block" into the unit. The shortest run is approximately fifteen (15) feet and the longest run is approximately one hundred (100) feet. The four (4) pairs of twisted pair are colored blue, green, orange and brown.

8. ClickQuick II provides its service at Villa Del Sol by attaching its facilities to the 66 block and using two (2) pair out of the four (4) pair of the twisted pair wiring to deliver its service into the unit. ClickQuick II uses the green and orange colored twisted pair wires at all of the buildings in Villa Del Sol. There is no economical way for ClickQuick II to provide its service at Villa Del Sol without using the two (2) pair of twisted pair wiring in this manner. None of the wiring used by ClickQuick II is used by BellSouth to provide its services into the unit.

9. BellSouth provides its service at Villa Del Sol using the twisted pair wiring not used by ClickQuick II. BellSouth uses the blue and brown colored twisted pair wiring. BellSouth technicians have complained to ClickQuick II technicians about having to use the brown colored twisted pair wiring at Villa Del Sol because BellSouth technical standards call for the use of orange colored twisted pair wiring.

10. Both San Marino and Villa Del Sol were constructed after January 1, 2000.

11. In or about December, 2002, BellSouth advised ClickQuick II that BellSouth was taking the position that the demarcation point for telephone wiring at San Marino and Villa Del Sol is at the wall plate inside each dwelling unit. BellSouth took this position in reliance on §25-4.0345(1)(B)(2) of the Florida Administrative Code which defines the "Demarcation Point" as "the point of physical interconnection (connecting block, terminal strip, jack, protector, optical network interface, or remote isolation device) between the customer's premises wiring. Unless ordered otherwise by the [Florida Public Utilities Commission], the location of this point [for a Single Line/Multi Customer Building is] within the customer's premises at a point easily accessed by the customer." Based on this position, BellSouth sent Petitioners a "cease and desist" letter, a true copy of which is annexed as Exhibit A.<sup>1</sup>

12. On or about January 31, 2003, ClickQuick II, acting as the duly authorized agent for San Marino at Laguna Lakes, L.L.C. and Villa Del Sol, L.L.C. sent a letter to BellSouth, a true copy of which is annexed as Exhibit B. The letter advises BellSouth that San Marino at

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<sup>1</sup> Petitioners question whether BellSouth's installation is truly a "Single Line/Multi Customer Building" type of installation. §25-4.0345(1)(B)(3) of the Florida Administrative Code sets the demarcation point for "Multi Line Systems/Single or Multi Customer Buildings – At a point within the same room and within 25 feet of the FCC registered terminal equipment or cross connect field." There are four (4) twisted pairs running into each unit from the 66 blocks and BellSouth has claimed that it may need all four pairs to provide services. The presence of four (4) twisted pair and BellSouth's claim to need all of them indicates that Bell South installed a "Multi Line System" at San Marino and Villa Del Sol.

Laguna Lakes, L.L.C. and Villa Del Sol, L.L.C. pursuant to 47 C.F.R. §68.105(d) each elect to set the demarcation point, as that term is defined and used in 47 C.F.R. Part 68 at a point 6” on the carrier side of the 66 block.

13. 47 C.F.R. §68.105(d)(2) states in pertinent part that “[i]f the provider of wireline telecommunications services does not elect to establish a practice of placing the demarcation point at the minimum point of entry, the multiunit premises owner shall determine the location of the demarcation point or points.”

14. BellSouth has not established a practice of placing the demarcation point at the minimum point of entry.

15. BellSouth has violated 47 C.F.R. §68.105(d)(2) in refusing to permit the multiunit premises owner to determine the location of the demarcation point.<sup>2</sup>

16. The sole reason BellSouth offers for refusing to follow 47 C.F.R. §68.105(d)(2) is the assertion that §25-4.0345(1)(B)(2) of the Florida Administrative Code is not preempted by 47 C.F.R. §68.105(d)(2).

17. Petitioners submit that the federal right of San Marino at Laguna Lakes, L.L.C. and Villa Del Sol, L.L.C. to set the demarcation point at 6” on the carrier’s side of the 66 block pursuant to 47 C.F.R. §68.105(d)(2) is in conflict with the asserted right of BellSouth to set the demarcation point at the wall plate inside the unit pursuant to §25-4.0345(1)(B)(2) of the Florida Administrative Code.

18. The Commission has previously declined to preempt state or local rules concerning the location of the demarcation point that could potentially conflict with 47 C.F.R.

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<sup>2</sup> This refusal comes after Petitioners have tried, in good faith, to resolve their differences with BellSouth.

Part 68 on the grounds that no record had been presented to the Commission warranting such preemption. However, the Commission said “[t]o the extent that local inside wiring policies could negate federal policies, the Commission will review the need to preempt them at that time.”<sup>3</sup> This Petition presents a concrete and specific case in which the state law is inconsistent with the federal law and is frustrating the federal policy of promoting competition in the telecommunications industry. The time has come for the Commission to review and preempt the state law. See *City of New York v. F.C.C.*, 486 U.S. 57, 108 S.Ct. 1637, 1642, 100 L. Ed. 2d 48 (1988) (“The statutorily authorized regulations of an agency will pre-empt any state or local law that conflicts with such regulations or frustrates the purpose thereof.”)

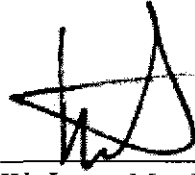
Therefore, Petitioners respectfully request the entry of an order declaring that:

- A. San Marino at Laguna Lakes, L.L.C. and Villa Del Sol, L.L.C. have the right to set the demarcation point at 6” on the carrier’s side of the 66 block at the properties they own pursuant to 47 C.F.R. §68.105(d)(2); and
- B. ClickQuick II has the right to use the facilities on the customer’s side of that demarcation point without interference by BellSouth; and
- C. §25-4.0345(1)(B)(2) of the Florida Administrative Code is preempted to the extent it conflicts with 47 C.F.R. §68.105(d)(2).

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<sup>3</sup> Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network and Petition for Modification of Section 68.213 of the Commission's Rules filed by the Electronic Industries Association, Order on Reconsideration, Second Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 88-57, RM-5643, FCC No. 97-209, 12 FCC Rcd 11897 (1997) at ¶ 36.

Woodbridge, NJ  
April 21, 2003



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W. James Mac Naughton  
Attorney for Petitioners ClickQuick II, LLC,  
San Marino at Laguna Lakes, L.L.C.  
a/k/a Bear Lakes Associates, Ltd., and  
Villa Del Sol, L.L.C. a/k/a VDS Associates, Ltd.  
90 Woodbridge Center Drive  
Suite 610  
Woodbridge, NJ 07095  
732-634-3700 – office  
732-634-7499 – fax  
email: w.j.mac.naughton@att.net

To: BellSouth Communications, Inc.  
675 West Peachtree Street, N.E.  
Suite 4300  
Atlanta, GA 30375-0001

Attn: Theodore R. Kingsley  
Richard M. Sbaratta

Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

**BEFORE  
THE FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of

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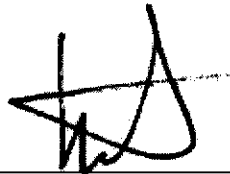
BellSouth Telecommunications, Inc.

Respondent

**DECLARATION OF W. JAMES MAC NAUGHTON**

1. I am the attorney for Petitioners in this action. I have read the First Amended Petition.
2. I know the allegations made in ¶¶ 1, 2, 6, 11, 12, 13, 14, 15, 16 and 17 of the First Amended Petition to be true. Upon information and belief, I believe all of the other allegations made in the First Amended Petition to be true.
3. I declare under penalty of perjury that the foregoing statements are true and correct.

Woodbridge, NJ  
April 21, 2003



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W. James Mac Naughton

Attorney for Petitioners ClickQuick II, LLC,  
San Marino at Laguna Lakes, L.L.C.  
a/k/a Bear Lakes Associates, Ltd., and  
Villa Del Sol, L.L.C. a/k/a VDS Associates, Ltd.  
90 Woodbridge Center Drive  
Suite 610  
Woodbridge, NJ 07095  
732-634-3700 -- office  
732-634-7499 -- fax  
email: w.j.mac.naughton@att.net

BellSouth Telecommunications, Inc.  
Museum Tower Building  
190 West Flagler Street  
Suite 1910  
Miami, FL 33139

sharon.kobman@bellsouth.com

Sharon R. Lieberman  
Attorney

305 347 9570  
Fax 305 375 0200

January 17, 2003

**VIA FACSIMILE AND US MAIL**

W. James MacNaughton  
90 Woodbridge Center Drive  
Suite 610  
Woodbridge, NJ 07095

**RE: SAN MARINO APARTMENTS, WEST PALM BEACH, FLORIDA  
VILLA DEL SOL APARTMENTS, BOYNTON BEACH, FLORIDA**

Dear Mr. MacNaughton:

This is in follow-up to our conversation on January 9, 2003 regarding your client's use of BellSouth's network terminating wire at the above properties without authorization. Ms. Ferguson of BellSouth forwarded a letter dated December 4, 2002 to you advising that your client's use was not authorized, however, your client's use has continued.

You advised that your client is an internet service provider (ISP). An ISP is not a telecommunications carrier and, thus, is not entitled to access to unbundled network elements such as network terminating wire. Access to UNEs is only for telecommunications carriers. See 47 USC 251 (referencing duty to provide to any requesting "telecommunications carrier" nondiscriminatory access to network elements on an unbundled basis) and 47 USC 3 (defining telecommunications carrier as any provider of telecommunications services and defining information service).

As discussed and noted in our December 4, 2002 letter, BellSouth has installed the regulated network terminating wire from the building terminal in the telephone entrance room to the network interface installed in each apartment. The Florida Public Service Commission (FPSC) requires that, in multi-dwelling buildings, the network interface/demarcation point be installed within the customer's premises at a point easily accessed by the customer. See FPSC Rule 24-4.0345. The demarcation point is the point of physical interconnection between the telephone network and the customer's premises wiring. The FPSC Rule has not been preempted by FCC rules regarding "minimum point of entry." See page 23, FCC 97-209, which was attached to our December 4, 2002 letter.

BellSouth installed the network terminating wire. It is the property of BellSouth and is part of its telephone network. Your client's use of BellSouth's network terminating wire is not authorized. Further, as discussed, your client's use of the wire is causing trouble reports to BellSouth, as your client is "taking" the wire at the inside network interface and interfering with the other existing wire(s) providing BellSouth service.

Your client is directed to cease and desist from use of the network terminating wire within 20 days from the date of this letter. Please direct your client to coordinate the cessation with Jackie Ferguson of BellSouth to avoid further disruption in service to BellSouth customers. Ms. Ferguson's telephone number is 561-439-9190. If your client does not cease and desist, BellSouth will pursue remedies available to it under law.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Sharon Liebman'.

Sharon Liebman

cc: Jackie Ferguson

ClickQuick II, LLC  
1307 Boston Township Line Road  
Richmond, IN 47375

January 30, 2003

By Fax and Mail

BellSouth Telecommunications, Inc.  
150 W. Flagler Street  
Suite 1910  
Miami, FL 33130

Attn: Sharon Liebman

Dear Sirs:

ClickQuick II, LLC is the duly authorized agent of San Marino at Laguna Lakes, L.L.C. a/k/a Bear Lakes Associates, Ltd., for the use and disposition of existing cable and telephone equipment at 4200 N. Military Trail, West Palm Beach, Florida, a residential property commonly known as San Marino at Laguna Lakes ("San Marino").

ClickQuick II is also the duly authorized agent of Villa Del Sol, L.L.C. a/k/a VDS Associates, Ltd., for the use and disposition of existing cable and telephone equipment at 2925 S. Federal Highway, Boynton Beach, Florida, residential property commonly known as Villa Del Sol ("Villa Del Sol").

Please be advised that effective immediately, the owners of San Marino and Villa Del Sol elect pursuant to 47 C.F.R. §68.105 (d) to set the Demarcation Point, as that term is defined and used in Part 68 of 47 C.F.R., at a point six inches (6") on the carrier's side of the "66 block." You are requested to not interfere with the use of Premises Wiring as defined and used in Part 68 of 47 C.F.R. by ClickQuick II, LLC. See Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network and Petition for Modification of Section 68.213 of the Commission's Rules filed by the Electronic Industries Association, Order on Reconsideration, Second Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 88-57, RM-5643, FCC No. 97-209, 12 FCC Rcd 11897 (1997) at ¶ 32. ("Simple Inside Wire Order"). ("Premises owners or customers, however, have a right of access to wiring on the customer's side of the demarcation point, and a responsibility to maintain such wiring."

You are requested to direct any inquiries regarding this matter to our attorney, W. James Mac Naughton at 90 Woodbridge Center Drive, Suite 610, Woodbridge, NJ 07095, phone number 732-634-3700 with information copies to James Vogel, Esq., 3936 Tamiami Trail No., Naples, FL 34103, phone number 239-262-4352.

Sincerely,

Alan Moore, Manager

CC: W. J. Mac Naughton  
J. Vogel

**BEFORE  
THE FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D. C. 20554**

In the Matter of

ClickQuick II, LLC,  
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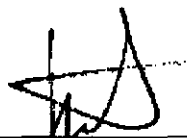
**Affidavit of Service**

On April 22, 2003, I served a true copy of the annexed First Amended Petition For Declaratory Ruling That The Location Of The Demarcation Point Pursuant To 47 C.F.R. §68.105(D)(2) Preempts The Location Of The Demarcation Point Pursuant To §25-4.0345(1)(B)(2) dated April 22, 2003 by mailing the same in a sealed, postage prepaid envelope in an official depository of the U.S. Postal Service addressed to:

BellSouth Communications, Inc.  
675 West Peachtree Street, N.E.  
Suite 4300  
Atlanta, GA 30375-0001  
Attn: Theodore R. Kingsley  
Richard M. Sbaratta

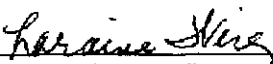
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Woodbridge, NJ  
April 22, 2003



\_\_\_\_\_  
W. James Mac Naughton

Sworn to before me this 22<sup>nd</sup> day  
of April, 2003.

  
\_\_\_\_\_  
Laraine Wing  
Notary Public of New Jersey  
My Commission Expires October 18, 2006